

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

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FRANK FISCHER, an individual,)

Plaintiff,)

v.)

SYSCO FOOD SERVICES OF)
CENTRAL ALABAMA, INC.,)
et al.,)

Defendants.)

DEBRA P. HACKETT, CLK
U.S. DISTRICT COURT
MIDDLE DISTRICT ALA.

Civil Action No. 2:05-cv-00763

**PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION TO
DISMISS**

The Plaintiff, Frank Fischer, by and through his undersigned counsel, responds to the motion to dismiss filed by the Defendant in this matter as follows:

1. That the undersigned, counsel for Plaintiff, was not aware of the pending motion to dismiss filed by the Defendant or this Honorable Court's order concerning responses to that motion until Monday March 27, 2005. The undersigned learned of the pending motion and the response schedule set out by the court from an email sent by Ms. Henrietta Calhoun, of the Middle District, notifying the undersigned that he was not properly registered with the electronic court filing system used by the Middle District

of Alabama. The undersigned received Ms. Calhoun's email upon returning from vacation last week and, upon reading it, attempted to properly log in to the CM/ECF system in order to change the necessary address and email information. The undersigned was not successful initially in logging on to the CM/ECF system, but has, as of this date, with the assistance of a telephone call from the Middle District office, finally logged on and made the necessary changes.

2. It was the fault of the undersigned for not making the necessary changes to the CM/ECF system which resulted in the undersigned not being aware of the discovery filed by the Defendant, of the motion to compel filed and the motion to dismiss. A further reason for the undersigned not receiving a copy of the discovery by the Defendant and the letter requesting responses to the discovery, was that those documents were sent to the undersigned's old office address. The undersigned has now been made aware that he has not filed a formal notice of change of address with the court and that is being done contemporaneously with the filing of this response.

3. The undersigned is aware that it has been his failure in not properly changing his registration with the CM/ECF system and failure to file a notice of change of address form which has caused him to not receive

the discovery filed by the Defendant and to not receive court notices via email. The undersigned apologizes to this Honorable Court for any inconvenience this may have caused the court and/or to counsel for Defendant.

4. The undersigned is providing, contemporaneously with a copy of this response, initial disclosure information to counsel for Defendant pursuant to Fed. R. Civ. P. 26(a)(1).

5. The undersigned did not intend to unduly delay this matter or to unduly prejudice the Defendant by failing to provide the discovery information timely and pursuant to this Honorable Court's orders. The failure to timely provide the information was an oversight on the part of the undersigned and was not an attempt to in any way gain an advantage in this matter by not providing all required and necessary information to counsel for Defendant.

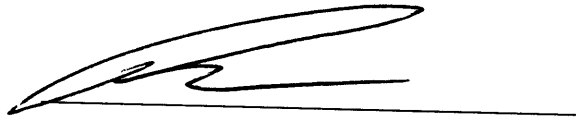
6. The undersigned understands his obligation, on behalf of the Plaintiff, to properly comply with all orders of the court and to prosecute this matter in an expeditious fashion in accordance with the scheduling deadlines previously agreed upon.

7. The undersigned, on behalf of the Plaintiff, would

respectfully request, due to the fact that he has only this week obtained copies of the discovery filed by the Defendant, an additional 14 days to respond to all discovery requests filed by the Defendant and pending.

8. The undersigned again apologizes to this Court for the delay and inconvenience his actions have caused in this matter. The undersigned has taken the necessary steps, as set out above, to insure that there will not be these sorts of delays in the future if this Honorable Court allows this matter to proceed by denying the motion to dismiss.

Wherefore, Premises Considered, the Plaintiff respectfully requests this Honorable Court deny the Defendant's motion to dismiss and the Plaintiff further respectfully requests this Honorable court grant the Plaintiff an additional 14 days in which to respond to the discovery requests filed by the Defendant.

A handwritten signature in black ink, appearing to read 'Davis L. Middlemas', is written over a horizontal line.

Davis L. Middlemas
ASB-2103-E63D
Attorney for Plaintiff
MIDDLEMAS & BERRY, LLP
205 North 20th Street, Suite 210
Birmingham, AL 35203
(205) 380-0737
(205) 251-1872
Davis@middlemasberry.com

CERTIFICATE OF SERVICE

I hereby certify that on March 29, 2006, I provided a copy of the foregoing to counsel for Defendant via facsimile and U.S. Mail to the following address and fax number:

William D. Smith, Jr., esq.
Arnold W. Umbach, Esq.
Starnes & Atchison LLP
100 Brookwood Place, 7th Floor
P.O. Box 598512
Birmingham, AL 35259
Facsimile # 205- 868-6099



Davis L. Middlemas
ASB-2103-E63D
Attorney for Plaintiff
MIDDLEMAS & BERRY, LLP
205 North 20th Street, Suite 210
Birmingham, AL 35203
(205) 380-0737
(205) 251-1872
Davis@middlemasberry.com